

IN FACTFINDING PROCEEDINGS UNDER
CALIFORNIA GOVERNMENT CODE SECTION 3505.4 (a)

In the Matter of a Dispute)
)
 between)
)
 The County of Fresno)
)
 and)
)
 Service Employees International)
 Union, Local 521)
)
 _____)

**REPORT AND
RECOMMENDATIONS
OF FACTFINDING PANEL**

PERB SA-IM-142M

Factfinding Panel

CHRISTOPHER D. BURDICK, Esq., Impartial Chair
CATHERINE BASHAM, ESQ, County-Appointed Factfinder
SEAN GRAHAM, ESQ., Union-Appointed Factfinder

June 18 and July 1 and 2, 2014

Appearances

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For the Union: Kerianne Steele, Esq.,
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INTRODUCTION

This fact-finding arises out of an impasse in negotiations between the Service Employees International Union, Local 521 ("Local 521" or "Union") and the County of Fresno ("County")

dealing with the Union's six bargaining units, consisting of approximately 4300 budgeted positions in most of the County's departments. After a course of bargaining begun in 2013 to reach agreement on new Memoranda of Understanding ("MOU": Cal. Gov. Code section 3505.1) for Fiscal Year 2013-2014 ("FY 13-14"), SEIU declared impasse in March and the County did so as well on June 6 of 2014; they engaged in voluntary (but unproductive) mediation on May 7, 2014; and, pursuant to the Union's demand, submitted the dispute to this fact-finding, held in the County seat, the City of Fresno, on June 18 and July 1 and 2, 2014.

Christopher D. Burdick was appointed by the Public Employment Relations Board ("PERB") to serve as Impartial Chair of the Factfinding Panel. The parties agreed to consolidate the impasse in all units for all purposes, including this Report (as the issues were mostly the same for all) and so hearing was held on June 18 and July 1 and 2, 2014 at the SEIU offices in Fresno. The County was represented on the Panel by Catherine Basham, Esq., Sr. Deputy County Counsel, while the Union appointed Sean Graham, Esq., of Weinberg, Roger & Rosenfeld, of Alameda, CA. Evan Merat, Esq., Deputy County Counsel, appeared for the County, and Kerianne Steele, Esq., of Weinberg, Roger & Rosenfeld appeared for the Union.

The time limits and deadlines set forth in Cal. Govt. Code Sections 3504 and 3505 were waived by the parties, the Panel and the Chair. The parties were afforded full opportunity to make opening statements and, in lieu of presenting witnesses in a formal, adversarial setting, to make their showings and arguments on each of the numerous issues in dispute. The Panel had a brief executive session on the morning of July 3. On July 26, 2014, the Chair sent by E-mail his first draft Report to his co-panelists, and, over the next 20 days or so, received their responses and proposed revisions, modifications, deletions, and redrafts. Those comments were received from July 7 through August 7, but given the continued impasse on the issues described below, on the date set forth below the Chair issued his final Report, with the concurrences and dissents of his co-panelists, as noted in the body of the Report.

A). The County Fresno County is a charter county with a five-member, elected Board of Supervisors ("BoS"), an elected Sheriff (a constitutional officer), and the usual, elected other department heads, as well as 13 appointed department heads. The Sheriff is responsible for the County's jails and correctional facilities (there is no county "department of corrections") and

approximately 9% of the employees in the bargaining units described below are employed by the Sheriff as Correctional Officers ("COs").¹

According to the 2010 U.S. Census, Fresno County, located in the Central Valley of the State of California, is the tenth most populous county in California, with a population of approximately 930,450. From 2010 to 2012, its population increased to 947,895. The County seat, the City of Fresno, is the fifth largest city in California and the thirty-fifth largest in the U.S., with a population estimated to be 502,303 in 2010, and is the largest city by far in population in the Fresno-Madera Combined Statistical Area (CSA) Clovis is a distant second, with 97,218 in population.

In 2012, over 73% of the County's population was nonwhite, with the largest racial/ethnic group Hispanic or Latino, of over 51% of its population. The second largest ethnic/racial group was Asian, over 10% of its population. From 2007-2011, 42.9% of the County's population over the age of five spoke a language other than English at home and over 23% of the County's population is below the poverty line. Median household income from 2007-2011 was \$46,903.

The County encompasses approximately 5,957 square miles and is the sixth largest county in the State. Agriculture is the primary industry in Fresno County -- in 2007, for example, agricultural production totaled \$5.3 billion -- and Fresno is the number two agricultural county in the United States. Much of the grinding, back-breaking hand work in the fields and farms is performed by undocumented immigrants, and the industry could not get by without them. These undocumented workers rely heavily on the County (particularly its health and social services agencies), as well as making much work for the Sheriff.

Major employment industries within the Fresno Metropolitan Statistical Area (MSA) in 2012 included non-farming industries such as trade, transportation, utilities, education, health services, and government. Major private employers in the County included the Community Medical Regional Center, Saint Agnes Medical Center, Kaiser Permanente, and Wawona Frozen Foods. Large public employers included the Fresno Unified School District, the City of Fresno, the Clovis Unified School District, California State University-Fresno, State Center Community College District, the U.S. Department of Veterans Affairs-Central California, and the County. In 2013, the County had approximately 6,500 employees.

¹ We are indebted, in most part, of the following "County" description to Arbitrator Elinor Nelson from her Report in Fresno County District Attorneys Association and County of Fresno in PERB SA-IM-130M.

The unemployment rate for the Fresno MSA in 2012 was 15.2%, considerably higher than the California unemployment rate of 10.5%, and almost double the 8.1 % unemployment rate for the country. In May, 2012, workers within the Fresno MSA had an average/mean hourly wage of \$19.81, about 10% below the national average/ mean hourly wage of \$22.01. Critics of a recent possible constitutional proposal to split California into six separate states note that the proposed "Central Valley State" would be the sixth poorest state in the Union.

B) The County's Retirement System and Social Security Fresno County is one of the twenty counties in the State subject to the County Employees Retirement Law of 1937 (the so-called "37 Act": Cal. Gov. Code Sections 31450 et seq.), and it is also in Social Security for all of its employees, **both** miscellaneous **and** safety. This means that each County worker's pre-tax take-home pay is reduced by **both** the 7.40% (more or less) contribution to Social Security **and** whatever the employee pays as her "normal employee contribution rate" to the Fresno County Employees Retirement Association ("FCERA"), a percentage based upon the employee's age at entry into county employment, usually around 6%-9% of "compensation earnable" for "miscellaneous" members and something a little higher for "safety members". Most (but not all, e.g., Kern and San Mateo, both of which are '37 Act counties) of the counties with which Fresno County compares its workers provide their employees with retirement benefits through the California Public Employees Retirement System (CalPERS; Cal. Gov. Code Secs. 20000 et seq.), and most of them, like Fresno, are in Social Security, for their general members and many for their safety members as well (but safety members in Contra Costa, Kings, San Joaquin, San Mateo and Ventura counties are not in Social Security, which means that [unlike Fresno's Cos] their net pay is higher than those safety members who do participate in Social Security.)

C) The Union The Service Employees International Union (SEIU) is probably the largest public sector labor union in the United States, representing state, city, county and special district employees up and down the state. SEIU's Local 521 represents six bargaining units in Fresno County, covering approximately 4300 workers, or about two-thirds of the County's represented employees. Some of these workers are the County's lowest paid employees, working in a myriad of job classes. For the purposes of this Report, the two most important Units are Unit 2 (including the Correctional Officers ["Cos"] employed by the Sheriff, Juvenile Correctional Officers employed in the Probation

Department, Child Support Officers employed by the Department of Child Support Services, and a number of other, smaller job classes) and Unit 12 (including many clerical classes, the Office Assistant ("OA") I-III class [the most numerous class in the Unit], Secretary I-IV, Janitors, Account Clerks, and a number of technicians and aides.

D) Bargaining in 2011, Impasse, and Unilateral Action The parties' seven-year labor agreement was set to expire on October 30, 2011, and in May, in light of the dismal economy and rising pension costs, etc., the County invited SEIU and all other affected units to begin bargaining early. SEIU unwisely declined, and so only commenced negotiations with the County on August 12, 2011, a remarkably truncated period of time, considering the totality of the circumstances, to try to reach an agreement on a new, successor MOU for all six units. The Amended Complaint filed by the Public Employment Relations Board, in Case No. SA-CE-768-M contends that on August 31 the County presented the Local with 700 proposals to modify or eliminate language in the 6 existing MOUs, and PERB alleges that at the first bargaining session on August 12, the County told the Union it had to reach an agreement by October 30, 2011. The County told PERB that the parties continued to negotiate beyond October. Among other proposals made by the County (in addition to the claimed 700 language changes) was the adoption of a new tier in the FCERA retirement system, which would apply only to new employees, and upon which the Union requested a large amount of actuarial information, which it says it never received and that its FCERA counter-proposal of October 6, 2011 was summarily rejected. PERB's Amended Complaint also alleges that the County made its LBFO on November 10, 2011 (when many of its MOU language proposals were still on the table) and PERB alleges that SEIU told the County it would submit the County's LBFO to a ratification vote but would not have the result until December 17. Union Ex. 12, p. 2, para. g. The Amended Complaint further alleges that the County imposed its LBFO before the Union ratification vote was completed.

Regardless of whose version of what was said and when about a possible impasse, what is clear is that on December 6, 2011, the Board of Supervisors acted unilaterally, by imposing across-the-board wage reductions of 9% for many SEIU job classes, with some classifications in these units suffering lower reductions because they had been added to

the bargaining units through unit modifications during the MOU term and had not participated in all of the increases the bargaining unit had received. The Board also halved the night shift premium for COs, from 8% to 4%; cut the educational incentive plan ("EIP") for COs in half; eliminated the SWAP program; adopted a new FCERA tier effective June 11, 2012 for new hires, and froze the County's contribution towards health insurance at the 2012 *status quo*.²

But several recognized employee organizations escaped this nightmare scenario by getting in early, meeting with the County, engaging in "concession bargaining", and agreeing, in the case of the Deputy Sheriffs Association for example, to a reduction in night shift differential from 8% to 4% and a temporary suspension of uniform allowance for FY 13-14, as well as a one-time 6% salary cut, a decrease in wages which "sunsetted out" several years later. Similar "sunset" salary cuts were agreed to by the Sheriff's Sergeants Association, etc., etc. Those unions and associations, like Local 521, which either got in late or bargained to impasse, received no such favorable treatment. SEIU promptly filed an unfair labor practice ("ULP") complaint upon which PERB ultimately issued, on March 19, 2012, an Amended Complaint (*supra*) charging the County with violating numerous provisions of the MMBA. PERB has not yet issued a decision in that case.

E) PERB Fact-Findings Involving This and Other Bargaining Units

Following this Board action, beginning in April of 2012, the parties engaged in a new round of negotiations for successor MOUs. Impasse was reached on September 13, 2012 [see Union Ex. 15, p. 2], the Local requested Fact-Finding under the MMBA, and on April 19, 2013, Arbitrator Jerrilou Cossack rendered a Fact-Finding Report, in which she recommended a 3-year MOU (effective July 1, 2013 and expiring on June 30, 2016), and recommending a 2% salary increase on July 1, 2013, an additional 2% on July 1, 2014, 1.5% on July 1, 2015, and 1.5% in April of 2016, as well as recommending reinstitution of the SWAP program in a slightly varied format and the institution of a 9-

² Acting in a unilateral way to impose a LBFO generally requires an actual impasse in bargaining, whether the other party agrees than an impasse exists or not.

step range (as opposed to the existing 6) in all salary ranges, with 3.125% between each step. The Board of Supervisors received, considered and rejected this Report on June 4, 2013, deciding instead to impose its LBFO.

On August 6, 2013, Arbitrator Elinor Nelson issued a Report and Recommendations for Bargaining Unit 10, the District Attorney Investigators Association, a small unit consisting of only 39 employees. This was one of the associations which had reached an early agreement with the County in 2011 for a MOU from June 13, 2011-June 9, 2013. But in 2013 the parties bargained to impasse, with the County demanding a 7% across-the-board salary reduction and the Association proposing a 3% reduction, maintenance of 5% in educational incentive pay for those possessing an Advanced POST Certificate, which the County proposed to reduce to 2.5%. There were a number of other items of lesser importance before the Panel, and Arbitrator Nelson recommended a 5% per year **temporary** salary reduction, to "sunset out" on the final day of a mutually agreed-upon MOU, with maintenance of the 5% POST pay and adoption of a 9-step salary range. The Board of Supervisors rejected this recommendation on September 10, 2013.

On August 5, 2013, Arbitrator Carol Vendrillo, in a Fact-Finding involving the Prosecutors Association, recommended a 5.5% salary increase for deputy prosecutors, plus an incentive pay of 3.5% for those attorneys who "achieve specialization", along with a few other matters. Apparently this Report resulted in a negotiated new MOU between the parties, the terms of which are unclear from our record.

F) PERB Unfair Labor Practice Charges and Complaints

Reflecting the deep labor malaise here, the parties (and a few other County unions) have been engaged in a series of unfair labor practice charges before PERB. We recite them and their substance below without expressing any opinion, one way or the other, on their merits (or the lack thereof) but merely to show how important it is for the parties to come to an agreement on a long-term agreement. As will also be seen, we will recommend as a precondition to a long-term agreement that SEIU agree, to the extent legally permissible, to dismiss all of its charges and ask PERB to withdraw any issued Complaints.

PERB Case No. SA-CE-768-M

An unfair practice complaint issued by PERB alleges that during the 2011 negotiations cycle, the County violated its duty to meet and confer in good faith when it prematurely declared impasse and on December 6, 2011 imposed its LBFO, even though (SEIU claims) the County's Chief Negotiator repeatedly told Local 521 that the parties were not at impasse and even though Local 521 was in the midst of presenting the County's offer to the membership for a vote. The County LBFO reduced employees' pay by 9% to 13%, while also eliminating some long-standing non-economic benefits. PERB Chief Administrative Law Judge Cloughesy presided over a multi-day hearing the parties now awaiting his decision.

PERB Case No. SA-CE-793-M

In this unfair practice complaint PERB alleges that Fresno County Administrative Officer, John Navarrette, and other County officials provided unlawful assistance to the Fresno Sheriff's Correctional Officers Association, a rival employee organization seeking to decertify SEIU Local 521 in bargaining unit 2. This case is pending before Administrative Law Judge Christine Bologna.

PERB Case No. SA-CE-834-M

In July of 2013, Local 521 filed ULP charge No. SA-CE-834-M; PERB in fact issued a complaint; and the matter was heard on April 23 and 24, 2014 before a PERB ALJ. SEIU complains that on January 31, 2013, the DCSS changed its promotions policy for SEIU-represented CSOs. The parties submitted post-hearing briefs and await a decision from the ALJ.

PERB Case No. SA-CE-840-M

In this case SEIU alleges that in 2012, the County prematurely declared impasse, so Local 521 demanded factfinding and hearings were held in 2013 in Case No. SA-IM-116-M before the late Jerilou Cossack, see *supra*. PERB complains to PERB that the Board completely disregarded the recommendation of the panel (that, in part, the County partially restore a number of the 2011 "takeaways"). Local 521 further alleges that, after the Cossack Report, it presented to the County an offer that mirrored the terms of the Cossack Panel's recommendation but the

Board rejected Local 521's offer. The underlying ULP charge here is that the County prematurely declared impasse and that the Supervisor's public hearing did not comply with the Brown Act because the BoS properly took the County Panelist and an attorney into a closed executive session when it deliberated over, and decided to reject, the Cossack Report and impose on Local 521. Unimpressed by these allegations, PERB's Office of General Counsel recently issued a dismissal letter, and the ULP was dismissed by the Board Agent, although the time has not run for Local 521 to appeal.

PERB Case No. SA-CE-846-M

In November of 2013 Local 521 filed a ULP charge in PERB Case No. SA-CE-846-M. PERB issued a complaint alleging that (1) the County failed to meet and confer in good faith regarding (1) the increase of 12-hour shifts available for Correctional Officers to 270 "keys", and (2) that without meet-and-confer the County also created Booking/Records and Transportation "specialty assignments" not subject to seniority-based shift bidding procedures. The PERB Complaint also alleges that the County violated MMBA when it refused to participate in factfinding. The case was set for hearing on September 11-12, 2014 but was rescheduled to another date due to the unavailability of a County witness.

PERB Case No. SA-CE-856-M

On February 26, 2014, Local 521 filed yet another ULP Charge No. SA-CE-856-M, alleging that on August 2, 2013, the County unilaterally changed its policy and practice regarding the standards, criteria and procedures for promotions of SEIU-represented employees in DCSS, including Office Assistants, Child Support Officers, and Account Clerks. SEIU alleges that DCSS made these changes without providing SEIU any notice or an opportunity to meet and confer. The County filed a PERB position statement asserting that the Local's charge was late and untimely and that in any case the County's actions were consistent with longstanding practice. PERB General Counsel is currently investigating this charge and no complaint has issued.

PERB Case No. SA-CE-865-M

Closely related to the previous charge, this case is a ULP filed on April 23, 2014 complaining that on January 28, 2014, DCSS notified SEIU it had decided to change its policy and practice regarding standards, criteria and procedures for promotion of SEIU-represented employees assigned to DCSS (including Office Assistants, Child Support Officers, and Account Clerks). After the Local demanded to bargain the underlying decision to make this change to promotions policy, the County refused to bargain over the decision, asserting that the change was only subject to "effects bargaining", arguing that County ER-EE Ordinance confers a "management right" to exclusively determine promotions policy. No complaint has yet issued and PERB General Counsel is still investigating the charge.

In the sum, this is a sorry picture of intransigence and a resolute steadfastness on behalf of the County Board of Supervisors, which in turn has drawn a guerrilla warfare response from the Union. Interminable hours, time, and monies have been expended in front of PERB which would all have been far better expended in some serious bargaining and the of-sought "willingness to compromise" on both sides (which the public says it wants but which, e.g., the [wildly unpopular] United States Congress refuses to provide).

III

STATUTORY CRITERIA AND ROLE OF THE PANEL

The Meyers-Milias-Brown Act ("MMBA"; Cal. Gov. Code sections 3500 *et seq.*; eff. January 1, 1969) was amended in 2011 to add a new step to the impasse resolution procedure, namely Section 3505.4 (a), which allows the recognized employee organization (but not the employer) to insist upon mandatory fact-finding after the unsuccessful conclusion of mediation.³

³ This amendment is less than a masterpiece of legal drafting and leaves ambiguous the status of mediation, which prior to this amendment was entirely permissive and available only at the parties' mutual, arm's-length agreement to submit their dispute to mediation. Under the new amendment, if mediation (which still appears to be permissive and not mandatory) is resorted to, and proves unsuccessful, then the recognized employee organization (but not the city, county, or district, as the case may be) can insist upon fact finding.

Section 3505.4

(a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

...

Section 3505.5 (a).

If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

As can be seen, it is decidedly **not** the sole, limited role of the Panel merely to "find facts", recite them, and stop there -- it is the obligation of the Panel to "make recommendations". Often, hearings of these panels occur many, many months after the impasse has been reached or the employer has acted, and the "facts" upon which the impasse has been based, or the employer's actions have been made, may well have changed. In addition, the hearings of such a panel are relatively formal and legalistic, and, in a case such as ours, may take several days and result in the admission of hundreds and hundreds and hundreds of pages of documents and materials. Often, a city council or board of supervisors have a compressed period

of time within which to act and cannot possibly be expected to read, weigh and digest the amount of paperwork we have been called upon to digest here. Nor do they have the time, given their busy agendas, to listen patiently to (often angry and distressed) witnesses in the manner and format a panel such as ours has had.

IV

DOCUMENTS AND MATERIALS

The parties each provided the Panel with a hefty binder of dozens of documents, including proposals, counter-proposals, Board agendas and minutes, comparability studies and comparisons, and reams and reams of financial, budget and Comprehensive Annual Financial Reports (CAFR) documents and the competing analyses thereof. A number of other supporting exhibits were received during the hearing, including updated salary surveys and job descriptions.

V

POSITION AND ARGUMENTS OF THE PARTIES

On Friday, August 8, 2014, at the request of the Chair (and after he had made his own attempt to characterize the parties Contentions, leading to an exchange of Emails in which counsel complained that the Chair was inaccurately summarizing their contentions), the co-panelists drafted their own statements, which appear immediately below:

Union Position

Term: The Union proposes a three-year term (7/1/14 through 6/30/17), which is absolutely essential to ensuring long-term labor peace after three years of highly contentious labor-management relations between the County and the Union. Historically, the County has entered into long-term MOUs with the Union and other employee organizations. Furthermore, the analysis of the County's fiscal condition presented by the Union's expert witness persuasively suggests that the County has strongly recovered from the effects of the economic downturn in 2008. The County presented no objective

evidence that there is a likelihood that its fiscal health will turn for the worse in the coming years, which would render a three-year term untenable.

Wages: The Union proposes a 9% wage increase over the span of a three-year MOU (3% on 7-1-2014; 3% on 7-1-2015; and 3% on 7-1-2016). A 9% wage increase would gradually restore the wages Union members lost in 2011, when the BOS implemented an across-the-board 9% wage cut. The Union's modest three-year wage proposal does not actually inflate or increase wages and benefits but merely puts the workers back where they were, to the *status quo ante* in 2011. The Union's expert witness testified that the County has the ability to pay a 9% wage increase over a three-year period, and in fact the County has never asserted that it is not financially able to pay such a wage increase. Nor has the County identified any liabilities or expenditures that would render the Union's proposed 9% wage increase unfeasible. The proposed pay increase is further justified because Union members' salaries have fallen behind those of comparable jurisdictions. In addition, many Union members, who include some of the lowest-paid County employees, have experienced severe financial hardship since the 9% wage cut in 2011.

Jail Work Redesign and SWAPs: In a good-faith effort to move towards a total agreement, the Union can recommend to its membership that the Sheriff maintain the current 270 12-hour "keys"/shifts at the County Jail and the current specialty assignments, provided this item is part of a package deal that includes a three-year term with a 9% wage increase. The Union also proposes the restoration of the SWAP program, which would apply to Correctional Officers, Juvenile Correctional Officers, Supervising Juvenile Correctional Officers, and Security Officers. At the fact-finding, the County agreed that the Union's SWAP proposal addressed the County's concerns with the prior SWAP program. The Union's proposed SWAP program is reasonable and manageable because it limits SWAPs to two employees; the SWAP must occur within two consecutive pay periods; only one SWAP is permitted per pay period; and the County has the right to restrict participation in the SWAP program where there is cause to do so.

Correctional Officer Education Incentive Program and Shift Premium: The Union proposes that there be no further reduction in the Education Incentive Program for Correctional Officers. The Union also proposes a reopener to bargain the restoration of the CO Shift Premium to 8%. In 2011, the County unilaterally reduced the COEIP in half, where it currently stands, to provide a modest 2.5% differential for COs attaining Advance Certificate Equivalency, and a 1.25% differential for COs attaining Intermediate Certificate Equivalency. A small percentage of COs currently is eligible for COEIP. Sound policy considerations also support maintenance of COEIP, because it promotes a better-educated workforce and incentivizes employee self-betterment. Intermediate Certificate Equivalency is also a minimum qualification for promotion to Correctional Sergeant; COEIP therefore aids in the ability of the County to internally recruit for managerial positions. Lastly, the County's proposal to take away the meager COEIP pay further erodes the salary of COs, at a time when County employee salaries are falling behind those of comparable jurisdictions.

Child Protective Services Differential: The Union proposes that the County maintain the existing 2.5% Child Protective Services Assignment Differential for Social Workers who are assigned to manage a full CPS caseload. The maintenance of the differential is wholly justified given the significant additional stress and occupational hazards associated with a full CPS caseload. Social Workers managing a CPS caseload are regularly confronted with tense, dangerous situations when they perform their work at the residences of at-risk minors. The County's proposed elimination of the CPS Differential would further erode the wages of Social Workers who have already suffered a 9% takeaway. The County has not offered any compelling explanation for its proposed elimination of the CPS Differential. There has been no change to the Social Worker classification or the CPS caseload which justifies the elimination of the differential.

Grievance Procedure: The Union proposes that the Meyers-Milias-Brown Act remain grievable under the Grievance Procedure, because the Grievance Procedure provides the machinery for expedited dispute resolution, whereas it can take many years for the resolution of a PERB charge. Although the Union still proposes the changes to

the Grievance Procedure identified in Union Exhibit 39, the Union is willing to consider a grievance procedure drafted by the Arbitrator.

Resolution of Bargaining-Related PERB Charges: As a token of good faith and a critical step in repairing the contentious relationship between the County and the Union, the Union will recommend to its membership the resolution of the bargaining-related PERB charges (SA-CE-768-M; SA-CE-840-M) as part of a complete package agreement that includes a 3 year term, a 9% increase, and the other terms outlined above. If the Union were to prevail in SA-CE-768-M, the County would be ordered to rescind the 9% wage cut in 2011 and make all affected employees whole. The Union estimates the County's liability to exceed \$100 million.

County Contentions

Term – MOUs with one-year terms are necessary, as the County does not believe it is able to commit to longer MOUs with SEIU. In the past, the County has committed itself to longer MOUs and found itself obligated to continue wage increases during a fiscal crisis. By not committing to MOUs longer than one year the County will be in a better position to ensure its ability to meet its obligations under such MOUs notwithstanding what the future may bring. Currently, the County has not agreed to longer terms for MOUs that included wages increases except for Bargaining Units that previously had sunset clauses on wage decreases.

Wages – The County believes a 1.5% increase for most non-Correctional Officer job classifications and a 1% increase for Correctional Officers over the course of one year are appropriate for several reasons. First, this amount is consistent with the increase in the cost of living for this area. Second, the County is not experiencing hiring or retention issues with SEIU job classifications. In fact, the wages received by SEIU employees are competitive with those wages received by similar job classifications in comparable counties and the County currently provides SEIU employees with a generous retirement package and annual leave program. Third, the County is seeking to achieve a fair and equitable compensation structure for all employees. SEIU employees fared much better

than most other County employees before and after 2011. Between 2005 and 2011 SEIU employees received wages increases greater than those increases received by other County employees. They even fared better than most employees after the 9% cut in 2011. Finally, the County's financial priorities at this time include not only increasing salaries but also returning services and programs to the public that have been cut in recent years and preparing to meet obligations expected to arise in the next several years that will cost the County millions of dollars. This last factor includes approximately \$42 million in Pension Obligation Bonds, the implementation of the Affordable Health Care Act, pending jail litigation, provision of healthcare to indigents, approximately \$1.5 million for animal control, landfill costs of approximately \$1.6 million, construction of the West Annex Jail, and obligations that may arise from pending PERB cases.

Differentials – Three differentials were identified by the County for elimination. This is part of an ongoing process by the County to phase out all differentials, not just those received by SEIU members. Eliminating these three differentials will reduce administrative costs incurred by the County and will allow the County to save funds it can then use to increase the base wages of its employees. Furthermore, the Medical Social Worker I/II Lead Worker Allowance and CPS Assignment Differential no longer serve their purpose so their continued existence is unnecessary. The number of Correctional Officers utilizing the Correctional Officer Education Incentive Program is minimal. In light of the costs involving in continuing to provide the incentive, and the fact that the requirements for obtaining the incentive can be satisfied with only minimal training or education in law enforcement or correctional work, the incentive does not serve to create a better Correctional Officer.

Jail Work Redesign Plan – The County seeks several revisions to its Jail Work Redesign that will better allow the Fresno County Sheriff to staff the Jail appropriately. This is necessary for the safety of Correctional Officers and to provide the requisite level of services to inmates. For example, the addition of the Transportation and Booking & Records specialty units will serve increase the Sheriff's ability to run the Jail efficiently while also increasing the safety of Correctional Officers. Furthermore, by providing the

Sheriff with greater control over of the selection of twelve, ten, and eight-hour shifts, the Sheriff can actually reduce the cost of running the Jail while ensuring necessary staffing levels. Greater control over the selection of shifts will be necessary so that the County can comply with staffing and service requirements that may result of current litigation involving the Jail. The changes proposed by the County will not circumvent seniority.

SWAP Program –The last SWAP program was terminated by the County because it was subject to abuse by employees. This abuse created several problems that impeded management's ability to ensure adequate staffing levels. The SWAP program also became more and more costly and burdensome to administer. The County is open to meeting with SEIU to discuss instituting a SWAP program, but it cannot commit to instituting a new program given the problems it has had in the past and the lack of certainty over the type of SWAP program SEIU has in mind.

Grievance Procedure – The current grievance procedure is unwieldy and inefficient. This has resulted in substantial delays in resolving grievances which does not benefit the County or SEIU. In addition, the format of the hearing has not been followed for several years by stipulation of the parties and the process should be amended to conform to actual practice and to clarify the ability of a party to appeal the hearing officer's decision. Related to this is the County's proposal to remove the meet and confer language from the MOU so as to eliminate the current ability of SEIU to simultaneously grieve an issue and file an unfair practice charge with PERB, taking "two bites of the apple" and potentially resulting in conflicting decisions. The proposals of the County and SEIU are very similar and the County believes the parties are close to resolving their differences over revisions to the grievance procedure. Therefore, the County has modified its position to propose a reopener to allow the parties to resolve their differences through future negotiations.

Summary of Contentions

It may be seen that in contrast to their LBFOs (particularly in the case of the Union), *infra*, the "Contentions" made are far less encompassing than the LBFOs. The

Panel therefore restricts its review and Report to those six (6) identified issues on which, it appears, the parties agree they are at logger-heads.

V

THE PARTIES' LAST, BEST AND FINAL OFFERS

After Fact Finding hearings had been concluded, on July 7 the County electronically submitted to the Fact Finding Panel the following, revised proposal for a one-year Memoranda of Understanding, for each of the 6 bargaining units, with any differences between units as noted where applicable:

County

1. **Term** -- 1 year , effective upon approval by the Board (All Units)
2. **Wage** -- effective the first pay period after approval by the BOS]
 - 1.00% - Correctional Officer I/II/III/IV
 - 3.45% - Health Aide I
 - 5.11% - Library Aide
 - 1.50% - All other SEIU classifications
3. **Correctional Officer Education Incentive Program** -- Eliminate (Unit 2)
4. **Child Protective Services Assignment Differential** -- Eliminate (Unit 3)
5. **Medical Social Worker I/II Lead Worker Allowance** -- Eliminate (Unit 3)
6. **Grievance Procedure** -- no changes, MOU Mid-Term M & C Reopener (All Units)
7. **Meet and Confer Requirement Articles**-- Eliminate (All Units)
8. **Correctional Officer Assignments (Jail Work Redesign)** -- As proposed by the County on 1/23/14 (Unit 2)
9. **SWAP** -- a Mid-Term M&C Reopener, with no guarantee of reinstatement (Unit 2 & 36)
10. **All Outstanding County Proposals** -- Meet and Confer prior to total agreement as Contained in the Six (6) Last, Best, attempt to resolve outstanding proposals and Final Offers not yet conceptually Agreed Upon (All Units)

The Union's LBFO, as of Friday, August 8, 2014 remained, with a few deletions, revisions and exceptions, basically unchanged ⁴ from those it advanced during the hearing, as follows:

Union

1. Term: 3 years (7/1/14 through 6/30/17);
2. Wages: 3% on 7-1-2014; 3% on 7-1-2015; and 3% on 7-1-2016;
3. Correctional Officer Education Incentive Pay ("COEIP"): no takeaway;
4. Correctional Officer Shift Premium: no takeaway; reopener to bargain over restoration of the full 8%;
5. Jail Work Redesign Program/Keys: Union can recommend to membership the current 270 12 hour keys and the specialty assignments as they currently exist, provided this is part of a package deal that includes a 3 year term with a 9% wage increase;
6. Jail Work Redesign Program—SWAP: Union proposes the SWAP program outlined in Union Exhibit 29, but modifies it to include all affected classifications: Correctional Officers; Juvenile Correctional Officers; Supervising Juvenile Correctional Officers; and Security Officers;

⁴ The Union's LBFO shortly after the hearing was as follows: 1. Term - 3 years (7/1/14-6/30/17); 2. Wages 3% on 7-1-2014; 3% on 7-1-2015; and 3% on 7-1-2016; 3. 9-Step Salary Ranges - agree to the County's unilateral changes to the prior 6 step structure; 4. Modified Grievance Procedure Union proposes the Grievance Procedure outlined in Tab 3, pages 000015-19 but is willing to consider a procedure drafted by the Arbitrator, but the Union proposes that the MMBA remain grievable under the MOU; 5. Prior Tentative Agreements - all previous TA and terms and conditions of employment unilaterally imposed to be continued, to the extent not inconsistent with Item # 6 in the Union's 4/3/14 LBFO; 6. The "Union" -- all references in MOUs to "the Union" be changed to "Service Employees International Union Local 521"; 7. MOUs for Bargaining Units 12, 22, and 36 -- all paragraphs to be appropriately enumerated; 8. Correctional Officer Education Incentive Pay -- *status quo*; 9. Correctional Officer Shift Premium -- *status quo* and reopener to bargain over possible restoration of the previous 8%; 10. SWAP Program -- Union proposes the SWAP program outlined in Union Hearing Exhibits, modified to include all affected classifications (e.g., Correctional Officers; Juvenile Correctional Officers; Supervising Juvenile Correctional Officers; and Security Officers); 11. Jail Work Redesign -- (a) the Sheriff to maintain the current 244 12-hour "keys" and (b) Booking and Records and Transportation not be considered "Specialty Assignments"; re Jail Work Redesign, the Union can agree to the current 270 12 hour keys and the specialty assignments as they currently exist, provided this is part of a package deal; 12. Non-Discriminatory Policy- accept County May 16, 2014, TA subject to a total agreement; 13. Child Protective Services Assignment Differential -- *status quo*; 14. Lead Worker Allowance for Medical Social Worker I/II -- TA, subject to total agreement; 15. Term of MOU and Renegotiation) -reject County's Proposal 6.j of May 16, 2014 but is agreeable to beginning negotiations 6 months before the expiration of the MOU; 16. Optional Use of County Owned Vehicle -- reject County' Proposal 7.c of May 16, 2014; 17. Library Aides -- wage increases of 5.11% on 7/1/14; 3% on 7/1/15, and 3% on 7/1/16; 18. Health Aides -- wage increases of 3.45% on 7/1/14; 3% on 7/1/15; and 3% on 7/1/16; 19. Non-Discriminatory Policy -- TA, subject to a total agreement;

7. Child Protective Services Assignment Differential: no takeaway
8. Grievance Procedure: Union Exhibit 3; the Union is willing to consider a grievance procedure drafted by the Arbitrator; the Union proposes that the MMBA remain grievable under the MOU;

These are all, in their totality on both sides, a formidably large number of complicated proposals and counter-proposals for the Panel to digest, all exacerbated by three years of bitter conflict and distrust. During these three years, some labor groups, *e.g.*, the DSA and the Probation Officers, have (without any County “comparability”, recruitment or retention explanations given to the Panel), fared far better than others, while a few department heads received, in 2014, hefty increases (although all department heads received no raises between 2007 and 2014) ; the Probation Officers’ wages increased, from 2005-2013 by 12.5% and these . SEIU units saw increases during this same time frame from 16.75% to 19.25%. County Ex. 15, p. 2, Union Ex. 22, p. 10]. The County contribution on behalf of employees and their families to medical insurance was essentially frozen until December of 2013, when the County contribution increased for the 2014 plan year from \$208.06 to \$223 per employee, certainly a modest sum. Union Ex. 25. Any health care increases over \$208 (or \$223) per worker, when coupled with normal employee Social Security and FCERA contributions, eroded the living standards of these workers.

VII

THE CHAIR’S STATUTORY DISCUSSION AND ANALYSIS

A) TERM AND REOPENERS

The County wants the flexibility of a short, one-year agreement, whereas the Union would like the relative certainty of three-year MOUs. The parties’ last arms-length MOUs (2004-2011) were very long in term – 7 years. The County believes its fisc is so uncertain and subject to external pressures that a one-year deal gives it the ability to provide modest (very modest, indeed) raises to most of the Union’s members, whereas the Union, fatigued by three years of

PERB ULP complaints and MMBA fact findings, wants the security and relative quiet of a longer term agreement.

Notwithstanding the fact that the parties have not had a consensual, arms-length labor agreement since the Fall of 2011, and that the County has proposed two "Reopeners" on contentious issues (SWAP and the Grievance Procedure) in its last proposal to the Panel, the County wants only a one-year agreement, beginning upon approval by the BoS. The Union, on the other hand, seeks a three-year agreement, from July 1, 2014-June 30, 2017.

The parties are in desperate need of some long-term labor peace, some repose, and an end to the ongoing, chronic, toxic relationship between the County's largest Union, County management and the Board of Supervisors. A long-term, rather than short-term, MOU is the best vehicle to achieve that goal. The County objects that its finances (as described above), while improving, are still so uncertain as to mitigate against an extended MOU. But the County is rapidly filling vacant positions, rehiring, strengthening programs, and doing so, in great part, on the backs of, and the expense of, its workers. The County failed during the hearing to tell the Panel which positions it would have to leave vacant, and which programs it would have to abolish or hold to the *status quo*, if these employees received anything more than the minimal wage increase proposed by the County. The listener hears the County paint its financial picture in a stark "programs for citizens" vs. "benefits for workers", as if this was a zero sum game.

The Chair believes a three-year agreement, with an "escape clause" for either the Union or the County for the second and third years would bring labor peace and go a long way towards improving the morale of a seriously demoralized workforce. Thus, under the Recommendations set forth below, during the month of February of 2015 or in February of 2016, either the Union or the County could advise the other that it wished to void the remainder of the MOU for the upcoming fiscal year or years. So, for example, in February of 2016, the Union could decide that the benefits it was receiving under its new MOU were insufficient to keep its members competitive in the relevant labor market and the Union would simply send the Board of Supervisors (or the County Clerk or the Personnel Director), a short (certified or registered mail) letter simply saying that it was voiding the upcoming fiscal year(s) of the MOU. The County could do the same, and neither party would have to give any reason whatsoever to make such a choice. So, if the County's finances "go south", it could walk away from the remaining fiscal

year or years of the contract without any obligation or penalty -- the parties would then have to sit down and negotiate a new deal.

The Union objects to this concept and insists upon a firm, non-waivable or "non-reopenable" 3-year MOU, suspicious that the Chair's proposed "Escape Clause" would fail to advance the very important objectives the Report identifies as "long-term labor peace, some repose, and an end to the ongoing, long-term toxic relationship between the County's largest Union, County Management and the Board of Supervisors."

B) Wages The competing salary data, spread sheets, job specs, graphs and charts, and the witnesses from both sides who testified thereon, could, taken separately and piece-by-piece, support about any conclusion. The parties' surveys of "comps" are both results-driven. But the County cannot continue to tell its lowest paid workers that it is acceptable and necessary to recruit for \$100,000 + department heads based upon what is paid in "comparable" counties, e.g., Kern, San Joaquin, Sacramento and Stanislaus but must compare its lowest paid workers to those in "computable" counties, e.g., Merced and Kings. The workers simply do not understand the logic of giving, let us say, a \$20,000 pay "increase" to a new Public Defender while simultaneously slashing the wages of a \$30,000 per year worker by 9%.

This problem of perception is exacerbated by the fact that the County did not assert its "ability to pay" during these hearings, although it did put on several witnesses from the Auditor-Controller's office and the office of the CAO who testified at great length as to the County's present financial state, its obligations, its restricted funds, its cash on hand, its "realignment" exposures and the like. Similarly the Union's skilled expert, Mr. Pham, testified the County has substantial cash on hand and is more than capable of meeting all the Union's financial demands. Fortunately we are not required to reconcile these competing views of the County's finances given the County's conscious and deliberate decision not to raise "ability to pay" as an issue.

The only group of employees who these workers regard as "comparable" or relevant are themselves prior to the 9% pay cut -- they want their 9% back and they want it back now. The hearing testimony about the devastating effects that this 9% cut had upon peoples' mortgages, car and credit card payments, loans, and the like was quite moving, although the County points out that today even after the 9% cut these

employees are still here and working. In fact, recent recruitments for vacant positions have resulted in a large number of presumptively qualified candidates. Following this argument to its logical extreme, the County could, in an effort to wring the maximum "productivity" it can out of each worker, keep cutting wages, differentials, and incentives to the point where people actually start "voting with their feet" and leaving,

The County has been to MMBA fact-finding three times before this proceeding and has "lost" each of those cases, all with Reports written by well-respected neutrals who could scarcely be characterized as pro-labor zealots by any stretch of the imagination. PERB has entertained and approved union/association ULPs and other charges in cases that require the digits of two hands to count.

In light of this tangled, litigious history it is no surprise that the workers and the Union regard the County's 1.5% wage proposal (only 1.00% for COs) as insulting (Union witnesses used such words as "theft" and "stolen"), insufficient and not supported by the data as the Union sees it. The Chair will recommend across-the-board pay increases of 3% effective the first pay period of January 2015, 2016, and 2017, totaling 9% at the end, in an effort to gradually put these workers back where they were.

C) GRIEVANCE PROCEDURE

During and after the hearings, both parties made procedural and substantive proposals to change the existing grievance procedure set forth in the addenda to the various MOUs. The County's hearing proposal was to maintain the *status quo* and to have a reopener during a one-year term so the parties could meet and confer on possible changes or revisions to the procedure. The Union continues to propose some substantial revisions to the procedure, exemplified, for example, in the attachment to Exhibit 3 of its hearing binder.

The existing grievance procedures have several unique provisions, for example allowing only employees (and not the Union) to file grievances, includes a provision that "... [t]here shall be no automatic rulings or abandonment of the grievance"; provide for mandatory mediation; establish a tripartite "Grievance Committee Review", a formation which everyone agrees has not been followed in at least 15 years; and if the requested relief could be implemented by a

Department Head and it is granted by the "arbitrator", the department head must implement decisions within his/her scope of authority unless the County itself seeks CCP Sec. 1094.5 judicial review. But if the grievance request/"arbitrator" decision require Board action, the Board may exercise its discretion to implement or not, and that decision is final. Judicial review of the decision of the Grievance Review Committee, or of the Board or department head, may be had by only way of administrative mandamus under California Code of Civil Procedure section 1094.5, a confusing process which drove many proposed changes, most reflected in SEIU's proposal.

Ideally, a grievance procedure should be concise, easily read and understood by the average employee, provide clear, specific timelines and deadlines, should encourage the settlement at the various steps along the way, and should result in a final and binding decision by some of party disinterested and uninvolved in the dispute, all without the involvement of the judiciary. The existing grievance procedures provide few of these ideals.

These grievance procedures are the creature of a labor agreement between the Union and employer, but they do not allow the very Union which created the grievance procedures to file grievances in its own name or on behalf of one or more of its members. The Chair can think of no other contractual; grievance procedure in the public sector which so provides. The grievance procedures also allow employees to sit on their grievances interminably without penalty, due to the "no abandonment" language described above. When read with the "Meet and Confer Requirements" of the MOUs (see, e.g., Art. 84 of the Unit 2 MOU, which provides that " ... California Government Code section 3500 (the Meyers-Miliias-Brown Act), is attached as an addendum to this MOU ..."), the County believes that to the procedures allow the Union "two bites at the apple" to pursue unfair labor charges, one avenue being *via* the MOU grievance procedure and the second through the Public Employment Relations Board (PERB). Both parties propose changing the name of the tripartite Grievance Review Committee to a single person "arbitration" procedure.

Although both parties denominate their new, desired, penultimate step in the procedure as "arbitration", this procedure is not true arbitration all but is merely an administrative hearing conducted by a neutral hearing officer who is required to prepare a decision consisting of findings of fact and conclusions of law, a decision which is reviewable and reversible by either the department head or the Board of Supervisors, with judicial review available thereafter under

CCP section 1094.5 (administrative mandamus).⁵ Awards of true "arbitrators" are final and binding on everyone who is a party thereto and are rarely reviewable (and then on only the most limited basis) by anything other than a petition to confirm or vacate under the California Arbitration Act, CCP sections 1280 et seq. But the Union does not propose to change the right of the Board to review and then reject the decisions of the "arbitrators" nor to limit the right of judicial review under CCP section 1094.5.⁶

The Chair will recommend to the parties that they agree to a new Procedure which (1) allows the Union to file grievances in its own name or in a representative capacity; (2) eliminates the "two bites at the apple" possibility by requiring an early election of remedies; (3) eliminates involuntary "mediation" and (4) also eliminates the (now fictional) tripartite panel; and (5) adds some language which will mandate the prompt and speedy advancement of grievances by the Union/grievant and penalize unreasonable and prejudicial delays. The Chair will not attempt to revise the entire, cumbersome and lengthy procedure, word-by-word and paragraph by-paragraph, but will leave the drafting and revisions to the parties if they can agree on the underlying concepts set forth above. If they cannot do so promptly, then we will recommend maintenance of the status quo with a short reopener from January 1, 2015 through March 31, 2015.

D) The Correctional Officers' Educational Incentive Plan For FY '13-'14, the Sheriff was budgeted for approximately 389 Correctional Officers (of all ranks and classes), approximately 98 of whom worked an 8-hour day, with 21 assigned to 10-hour days, and the great majority (270) working a 12-hour shift. Remarkably, only 74 of these 390 (more or less) COs participated in the MOU's generous Educational Incentive Program set forth in Article 45 of the '04-'11 MOU. That Article provided two levels of Incentive, namely a 5% incentive (constituting both "'compensation earnable" and base pay" for FLSA purposes) over base pay for those who had an "Advanced Certificate

⁵ CCP 1094.5 is an awkward, time-consuming and very expensive conclusion to what is supposed to be an informal process, one which does not require a lawyer to present cases to the "arbitrator". Superior Court judges generally detest CCP 1094.5 cases, as they require a *de novo* reading of the transcript of an administrative hearing – and most of that reading will occur at home after court is adjourned, as the calendars of most superior court judges are jammed all day with hearings, trials, motions and other judicial matters.

⁶ If the Chair was a free-actor here, he would get rid of the whole existing, cumbersome, and time-consuming system and replace it with a simple, straight-forward system with concrete deadlines and timetables, with just a few intermediate steps and which culminates in final and binding arbitration with the decision reviewable only under the Arbitration Act and not by administrative mandamus. But neither party proposes this, and apparently the concept of "grievance arbitration" is anathema to the County, in any case.

Equivalency" and 2.5% for those who possessed "Intermediate Certificate Equivalency". To obtain these "equivalencies", the candidate needed to have the requisite units of college education, some years of correctional experience, and training at the Basic Correctional Officer academy.

At the same time the County unilaterally imposed its 9% across-the-board salary cut, it cut these incentives in half, reducing the 5% "Advanced" pay to 2.5% and cutting the 2.5% pay for "Intermediate" to 1.25%. The County now proposes to eliminate the CO Educational Incentive Program in its entirety, for the sole purpose of saving money (the EIP costs approximately \$194,000 annually and is "percentage based" [rather than a flat rate, e.g., \$50 a month] and so increases as wages rise and constitutes "compensation earnable" and thus increases FCERA costs). The County also points to low EIP usage, in a program not found in other classifications (e. g., JCOs require more education but do not have a similar program).

The Union proposes simply maintenance of the reduced *status quo* (Union Ex. 3) and points out that possession of the Intermediate Certificate is a minimum qualification for promotion to Correctional Sergeant, to which the County made the astounding rejoinder that it would drop this requirement from the job description, thereby, essentially, "dumbing down" the class.

The Chair is frankly stunned that the County actually seeks to lower and diminish, rather than raise and strengthen, an incentive program for one of the most visible aspects of its law enforcement function. Apparently the County is subject to at least two federal consent decrees covering its jails, and in most counties more claims are made against the county and its liability insurers from incidents occurring in or around the jails than practically any other function the county performs. There is no more "diverse" place in the County than the population inside the walls of the County's jails, and the Sheriff should do everything she can to ensure the hiring and retention of the best educated employees she can find.

To suggest that the County should seek to hire "dumber" and more poorly educated COs and to discourage those presently employed from continuing their education is a staggering, ill-conceived proposition. The *de minimis* money saved by dumbing down the workforce will be far outweighed by the long-term consequences for the Sheriff's correctional facilities.

On October 7, 1968, then-United States Attorney General Ramsey Clark briefly addressed the 75th Annual Convention of the International Association of Chiefs of Police in Honolulu, Hawaii. Clark, a well-known liberal and no friend of the average peace officer, told the assembled chiefs:

[T]he police must be vitally interrelated with every segment of the public they serve. Careful efforts with juveniles, particularly in areas where delinquency is high, is an important police need. Close contact with medical and social welfare resources to work with addicts, alcoholics and persons with mental health problems aids police work.

A nation fast approaching the time when half of our young will go to college **must draw intensively from college ranks and provide continuing educational opportunities to young officers. Doubling the number of colleges offering police science courses in the past four years is of great importance to law enforcement.** Advance research in physical, mechanical and social sciences must be greatly expanded to serve police. Recruitment from social minorities is essential to effective police work among minorities and meaningful relations with them. The police must be drawn from every segment of society. [Emphasis added].⁷

As a direct result of this speech, the growth of educational incentive (and affirmative action) programs for peace and correctional officers blossomed, and the growth and influence of the California State Commission on Peace Officer Standards and Training (POST) took off at the same time. Today it is practically impossible to find a California police department or sheriff's office which does not offer some educational incentive program to its personnel, based upon their possession of an Intermediate or Advanced POST Certificate, or college degrees, or some combination thereof. The Sheriff's Department in Fresno County has such a program and the Board of Supervisors has not proposed to abolish, or minimize, it, as far as we know. We can see no reason why it makes sense to have "smarter" deputy sheriffs while seeking out and retaining "dumber" correctional officers. It is hard enough as it is to go to college and earn a degree working a 12 hour graveyard shift, and to remove the financial incentive for doing so makes no sense whatsoever. Indeed, even at the old higher 2.5%/5% levels, only 19% of the COs participated in this EIP program, which indicates either that (1) the 5% and 2.5% incentives are not high enough

⁷ Time has made some of his other suggestions charmingly quaint. For example, in regards to compensation, he told the Chiefs: "Salaries must be raised to attract, retain and develop the most talented and dedicated people we have. Standards will vary in different areas, and for different police functions, but we can commit ourselves now to rapidly raise salaries and to keep their level under constant review. Patrolmen should begin at \$10,000 per year in most parts of the country and advance as patrolmen to \$15,000 or more. Salaries for non-commissioned officers and specialists could range from \$15,000 to \$20,000. Lieutenants, Captain and division heads should earn from \$20,000 to \$30,000 in most major departments. Chiefs and administrative heads earn \$30,000 to \$50,000 and should be paid accordingly. We must recognize how important professionalization of police is and we must pay for it."

to entice greater participation, or (2) the minimum requirements for participation are strenuous and difficult and so only a few motivated officers can attain them. The Chair will recommend maintenance of the *status quo*, although if asked to do so he would have happily recommended reinstitution of the old 5%.2.5% EIP.

E) The Correctional Officers' Shift Differential The 8% shift differential COs received constitutes "compensation earnable" under FCERA and also constitutes "base pay" for the purposes of calculating FLSA overtime. The County halved this differential in December of 2011. Neither party presented any evidence as to what other "comparable" or "commutable" counties pay their sworn jail workers on the swing and graveyard shifts. In the Chair's public sector experience (going back to 1969), 8% is a rather high differential, even for the graveyard shift.

The County wants to convert all its differentials, in a best case scenario, to a Zero, or at the least to "flats" rather than "percentages", so the amount of the differential does not go inexorably up every time a pay increase is granted. The Chair will recommend a return on January 1, 2015 to 8%, but with an immediate conversion of that percentage to a flat hourly amount, calculated upon top step in the salary range for each job class receiving the incentive. So, for example, if the top (that is, we believe, 9th) CO hourly rate is, let us say, \$20 an hour, the incentive will be converted to \$1.60 an hour for every employee (regardless of job step) working the relevant shift and will stay there for the term of the new MOU.

F) Other Differentials But we do not believe the justifications for continuing the COEIP necessarily carry over to the other two disputed differentials. The County explains that (1) it is engaged in a County-wide effort to phase out all differentials, not just those received by SEIU members (although it has not apparently made any effort to do so with the POST pay received by many deputy sheriffs), and (2) by doing so it will also reduce (unidentified) "administrative costs", and (3) "... allow the County to save funds it can then use to increase the base wages of its employees ..." (although the County has not offered to raise the pay of the CPS or SWs as a class by the money saved by reducing the differentials paid to a few of their number).

The number of budgeted FTEs eligible to receive the Medical Social Worker I/II Lead Worker Allowance is down to three (3), and no one is presently actually receiving

the differential. Therefore, the Chair will adopt the County recommendation in this regard to end the differential.

As to the CPS differential (available to about 250 Social Worker III's), one could say that carrying an active case load is essentially "a part of the job" for the CPS employees who want the assignment. Mr. Cortes testified that the original reason for the differential was to "... incentivize recruitment in CPS and [encourage] retention of these workers ..." Article 48 of the relevant MOU provides a 5% differential for workers "who are regularly assigned Child Protective Services (CPS) cases ..."

At hearing the County justification for change was not the nature of the CPS casework being performed but the recruitment/retention issues between the two County departments that formerly employed SW III's (the Department of Children and Family Services and the Department of Employment and Temporary Services/DSS). These two departments have recently merged into one department which can assign SWs as needed, and so the County argues that there is no recruitment/retention justification for this differential. But more fundamental than that is the fact that these workers are being paid a "differential" for work already encompassed in the job description for their classification, Social Worker III (Union Exhibit 34). Under the "Samples of Duties" listed in the job description are the following:

1. Interviews clients at home or in the office to assess social service needs.
2. Researches, evaluates, and develops a case plan to meet client needs.
3. Counsels and advises client to help resolve problems, acknowledge, understand, and accomplish case plan goals.
4. Monitors, assesses, and violates progress in case plans.
5. Interprets and applies laws, policies, procedures, rules and regulations governing social services programs to clients and the public

...

9. Maintains case files and prepares reports, memoranda and correspondence.

...

11. May be an agency witness in court hearings and may prepare written reports.

These typical tasks and duties certainly encompass carrying an active caseload, and we do not understand why the employees should expect an incentive or differential to do work which is a basic part of their job description. This would be somewhat akin to a deputy sheriff demanding a 5% differential for doing patrol work, on the grounds that on the street one often runs in nasty criminals, dangerous misdemeanants, and all kinds of bad people and so one may get hurt, all of which is true but all of which is a basic part of the job.

The Union argues that juvenile case work is much different, that dealing with children (many of whom are often abused, battered, abandoned, mistreated or otherwise woefully situated and who had no choice in the matter) is different than dealing with adults, many of whom are the victims of their own bad choices and poor judgment. Certainly the Chair can think of few things more draining and spiritually depressing than dealing with disadvantaged kids, but that is what the job description for the basic position calls upon these workers to do and the Chair can see no reason to justify continuation of the differential for performing some basic elements of the job. Therefore the Chair will adopt the County recommendation to end this differential, although for different reasons than the County had espoused.

H) The Sheriff and Probation Department's SWAP Programs For many, many years the Probation and Sheriff's Departments have allowed Correctional Officers II-IV, Security Officers I-II, Juvenile Correctional Officer I-II and Senior Juvenile Correctional Officers the ability to engage in a "SWAP" of their regularly assigned shifts and days off. The provisions are set forth in Article 77 of the 2004-2011 MOU and, suffice it to say, that Article allowed up to five workers to be involved in any one SWAP, which must be completed within 90 days for certain job classifications, provided that the County does not incur any overtime obligations as a result of the SWAP, and that the SWAP must be requested by both the "Swapper" and the "Swappee", subject to the written approval of the Watch Commander which it appears, was fairly routinely granted.

⁸ Only these sheriffs and probation employees enjoy this SWAP privilege and the County does not offer it to any other bargaining unit in the County, even to those other County employees who regularly perform 24/7/365 shift work, *e.g.*, deputy sheriffs.

⁸ The Union says the SWAP was originally based upon that offered by the State to its Cos. Review of the current CCPOA MOU on the State DPA website reveals a far less liberal program – perhaps the State plan has morphed into a less liberal program, which today provides as follows

Article 11.04 Exchange of Days Off - Shift Assignment (Mutual Swaps) Employees may be permitted to exchange hours of work of one (1) hour or more with other employees in the same classification or level, performing the same type of duties in the same work area, provided:

1. The employees make a written request to their supervisor(s), at least twenty-four (24) hours prior to the exchange;
2. The supervisor(s) approves the exchange; and
3. The employees exchanging hours of work shall not be entitled to any additional compensation (*e.g.*, overtime or overtime meals, shift differential) which they would not have otherwise received. Holiday pay shall be paid to the employee who physically worked the holiday consistent with section 10.11(E).⁸⁴
4. An employee may have no more than two (2) persons working for them during a shift.

B. Once approved, shift changes shall not be subjected to further review, except for operational needs. If a shift swap is denied, the supervisor denying the swap shall state the reason for the denial on the written request.

C. Shift assignment positions under this Article are limited to:

1. Correctional Officers
2. Youth Correctional Counselors
3. Youth Correctional Officers
4. Medical Technical Assistants
5. Fire Captains

D. Each employee shall be responsible for the coverage of the work assignment he/she accepts. If the employee who agrees to work for another employee fails to show for the swap, and provides proper medical verification, he/she shall be subject to repaying the actual length of the shift (*e.g.*, eight [8] hours for an eight [8] hour shift, or ten [10] hours for a ten [10] hour shift). The swap sheet shall inform the individuals swapping that the employee who fails to pay back the swap shall be subject to repaying the actual length of the shift. The State shall first use the appropriate, accrued time credits for the repayment; then use "accounts receivable" should time credits be insufficient for the repayment. Once reimbursement is made by the employee, the employee may not be subject to adverse personnel action for this incident. In the event the employee fails to show because of illness or injury, he/she shall be required to provide a medical verification in accordance with section 10.02 of the MOU. If the employee fails to provide medical verification, the employee shall be charged twelve (12) hours of the appropriate leave credits.

E. All swaps must be paid back within ninety (90) calendar days. Where the pay back cannot be accomplished without overtime being earned by one (1) or both of the affected employees the requested swaps shall be denied.

F. Probationary employees normally shall not be allowed to exchange hours of work with other employees in the same classification or level at all during the first three (3) months of their probationary period. During the remainder of an employee's probationary period, the employee shall be allowed up to one (1) swap per week.

The County has proposed a reopener on the existing SWAP program, whereas SEIU October 17, 2013 proposal (as spelled out in its Ex. 29, as modified to include all affected classifications [e.g., COs, Juvenile COs, Supervising Juvenile Cos, and Security Officers]) would modify the "old" SWAP program to limit it to two employees in the same job classification working in the same institution, with the swap being completed within two consecutive pay periods without any resulting County or FLSA overtime, with only one SWAP per pay period, and a few other technicalities. The Union believes that its proposal addresses two of the County's primary concerns, namely reduction in the number of SWAPping employees (from 5 to 2) and greatly shortening the pay periods in which the SWAP must be completed.

The County and the Sheriff are convinced this program has led to massive abuse, with employees regularly trading their shifts not for one-off personal events or emergencies (*i.e.*, baptisms, weddings, daycare, family, illnesses, and the like) but simply to arrange for themselves a four-day or five-day weekend off, as a matter of routine. There are also substantial indirect administrative time and costs involved in running, administering, sustaining and reviewing the SWAP program on a daily basis, with trades flying here and there, and a supervisor required to spend time approving and reviewing each SWAP.

With some exceptions, all shifts in the Sheriff's Department are described in the so-called "Jail Work Redesign Plan", an Addendum to the 2004-2011 MOU, and that "Redesign Plan" (see *infra*) must be read together with the SWAP program for some understanding of the mechanics of how things actually work inside the jails. Shifts are bid for on the basis of seniority, excluding those assignments considered "Specialty Shifts" or "Assignments", which are assigned at the sole discretion of the Sheriff. The slots to be bid upon are commonly referred to as "keys", and these keys carry 8-hour, 10-hour, or 12-hour assignments, as the case may be. Notwithstanding these concerns, the County's last proposal to the Panel was that there be a "SWAP Reopener with no guarantee of reinstatement (Unit 2 & 36)".

G) Jail Redesign At the same time, the County and the Sheriff insist upon their proposed "Jail Work Redesign" proposal, submitted by the County to the Union on January 23, 2014 for Unit 2, which would include an expansion of "specialty assignments", exempt from the seniority bidding process. At the hearing, the Union never really articulated a sound, public-policy-based reason for the very existence of the SWAP program. It is simply an engrained fact of life for many workers, it has been there for some time, they are used to it, it is convenient, and so they want to keep it. The Sheriff (an elected, constitutional officer: Cal. Const. Art. XI (4) (c)) regards it as an impediment to the exercise of her statutory discretion and wants to substantially limit it. No other workers in the County (including deputy sheriffs) enjoy this privilege, and the Chair can see no reason to cement it into concrete except as a possible palliative for the COs, especially those who lost their EIP and saw (and felt) their shift differential cut in half, a possible amelioration of the financial pain they have suffered since December of 2011. The Chair is not going to second-guess the Sheriff here -- making fundamental policy decisions of this type is what she is elected (or, perhaps, the reverse) for, and if she feels she needs more "specialty assignments" and fewer "keys" for certain hours, then we are prepared to indulge her in that conclusion.

What the Chair has said above in regards to the SWAP program also applies here, and the Chair will adopt the Sheriff's proposal in regards to Jail Redesign: see Recommendation, *infra*.

H) PERB Charges The Chair recommends that if the parties can reach an arms-length, consensual agreement on a new MOU that the Union agree to dismiss all of its PERB charges. There would be little incentive for the County to sign off on a new deal while it is looking at, for example, the Union zealously still pursuing one or more of its PERB cases, at least one of which could pose (if judicially enforced) a substantial back pay exposure relating back to December of 2011. These parties need labor peace and a clean slate so that they can make an effort to mend fences, lick wounds, and patch up and cure their toxic relationship -- having these PERB cases loom over its head will surely have the famous "chilling effect" on the County's willingness to do this.

The Union needs to look forward and not backward, and if it can finally get MOUs for these 6 units it should spend its valuable time and surely limited financial resources (we assume that having lawyers working on all of these PERB cases is a not inexpensive proposition) on rebuilding a relationship based on mutual respect, trust and confidence, and it is hard to do that while still involved in litigation.

VIII

RECOMMENDATIONS

In light of the foregoing discussion and analysis, the Chair recommends the following:

Term – September 1, 2014-August 31, 2017, with either party allowed to void the remainder of the Term, without the need for any reason or explanation, by giving the other notice in March of 2015 or March of 2016

Wages—Increases of 3% effective upon January 1 (or the beginning of the first pay period in each year) of 2015, 2016 and 2017, for a total of 9%

Correctional Officer Educational Incentive – Maintain the existing 2.5%/1.25% incentive

Correctional Officer Shift Differential – Restore the 8% but convert that percentage to a flat dollar amount (as described in the Report) effective January 1, 2015

Correctional Officer Assignments (Jail Work Redesign) -- As proposed by the County on 1/23/14 (Unit 2)

Child Protective Services Assignment Differential – As proposed by the County, to eliminate (Unit 3)

Medical Social Worker I/II Lead Worker Allowance -- As proposed by the County, to eliminate (Unit 3)

SWAP -- a Meet and Confer Reopener from January 1 through March 31, 2015, with no guarantee of reinstatement for Units 2 & 36

Grievance Procedure -- a new Procedure which (1) allows the Union to file grievances in its own name or in a representative capacity; (2) eliminates the "two bites at the apple" possibility by requiring an early election of remedies; (3) eliminates involuntary "mediation" and (4) also eliminates the (now fictional) tripartite panel; and (5) adds some language which will mandate the prompt and speedy advancement of grievances by the Union/grievant and penalize unreasonable and prejudicial delays.

Meet and Confer Requirement MOU Articles -- *Status quo*.

August 15, 2014

Christopher D. Burdick, Esq.,
S.B.N. 042732
Impartial Chair

Concurrences and Dissents follow:

Fresno County and SEIU Local 521

Case No. SA-IM-142-M

CONCURRENCE AND DISSENT OF FRESNO COUNTY'S REPRESENTATIVE TO
FACTFINDING PANEL, CATHERINE E. BASHAM

As the representative for Fresno County (County) to the Factfinding Panel, I concur with many of the recommendations made by the Panel Chair. However, there are some recommendations with which I disagree, and for that reason, I am submitting the following concurrence and dissent.

I. CONCURRENCE

I concur with the following recommendations of Panel Chair Chris Burdick:

- A. Correctional Officer Shift Assignments (Jail Work Redesign): Adopt County's proposal.
- B. SWAP: Reopener with no guarantee of a renewal of the SWAP program.
- C. Grievance Procedure: While no particular language was recommended, I concur with the recommended terms set forth in the Panel Chair's recommendation with the understanding that the parties would meet and confer to determine the specific language of the new Grievance Procedure.
- D. Meet and Confer Requirement MOU Articles: My concurrence with the recommendation not to eliminate this provision is based on the assumption that the Grievance Procedure agreed to by the parties will require SEIU, Local 521 to elect a remedy if and when it believes there has been a violation of this article, so as to prevent "two bites at the apple".
- E. CPS Case-Load Differential for Social Workers: Eliminate
- F. Medical Social Worker Lead Worker Differential: Eliminate.

II. DISSENT

I dissent from the following recommendations of the Panel Chair for the reasons set forth below:

A Term: While I appreciate the Chair's creativity in recommending an "escape clause" to assuage the County's concerns with regard to a longer term for the MOUs, I am concerned that if the County determined it necessary to void the final year or two of the MOUs, this would only lead to greater distrust by employees. Therefore, I believe a fixed term is more appropriate and, in light of the uncontroverted testimony by County witnesses of the uncertain nature of the County's financial future, that term should be limited to one year. Published MOUs with other bargaining units demonstrate that the County has not been entering MOUs with a term longer than one year that included a wage increase except for Bargaining Units 1, 14, and 35. Those units previously had MOUs with sunset clauses and their agreement to spread out the wage increase over a three year period was a further concession by those units. Further, given the extended time period for this factfinding, I recommend that the term begin after September 1, 2014, on the first day of the pay period after approval by the Board of Supervisors.

B. Wages: The Chair has recommended three annual increases of 3%, for a total of 9% during the term of the MOU. The primary justifications given for this recommendation are that the employees want to be restored to their prior position and the employees are unable to distinguish between themselves and department heads who recently received their first salary increases in over six years. I do not find these justifications sufficient, particularly in light of the contrary evidence we are required by the factfinding statute to consider.

The County and the Union used slightly different CPI measures, but both indicated a current cost of living increase of approximately 1.5%, which is consistent with the County's proposal. As shown by the calculations of the Union's expert witness, Hoan Pham, these employees are in a much better position than they would have been had they only received raises consistent with the CPI since 2005. Indeed, even with the 9% reduction in 2011 an employee earning \$50,000 in 2005 has received \$15,000 more over the past ten years than he would have received based on CPI alone. (Union Ex. 22, p. 12) Thus, the current and historical CPIs both support the County's wage proposal.

The Union compared salaries received by covered employees with similar positions in counties such as Contra Costa and Riverside on the sole basis that such counties were used as comparables over a decade ago. The County's witnesses explained without contradiction that these counties were no longer comparable or relevant because of the great differences in the cost of living and the job market. A comparison with local counties, those with which Fresno County competes for employees, showed that Fresno County was within the range of salaries for the positions reviewed. The appropriateness of the salaries was further supported by evidence that there are no recruitment problems for these positions.

Beth Bandy testified that the County was seeking to return services to the public as well as provide salary increases. However, in raising salaries, the County was also seeking to establish a pay structure that was internally fair and equitable. The fact is that SEIU represented employees enjoyed significant salary increases when other classifications received none. Since 2005—including the 2011 salary reductions—SEIU employees have received net salary increases ranging from 16.75% to 19.25%. Net increases for other employees range from 6.99% to 21.5%, placing SEIU-represented employees well in the upper half of all employees. The County's salary proposal would maintain or increase the standing of these bargaining units in comparison to other employees.

The Union presented information on recent salary increases for department heads in an attempt to justify its salary proposal. As noted by several witnesses, the County has experienced both recruitment and retention problems with its department heads. Further, recruitment for department heads is often on a state-wide rather than local basis, requiring a review of salaries in more areas than is necessary for line staff. Finally, between 2005 and 2013, appointed department heads had net salary increases of only 5.40%, with no raises at all since 2007 and reductions in 2011. The recruitment needs and pay history of department heads and SEIU-represented employees are simply too different for there to be any basis for comparison.

C. Correctional Officer Educational Incentive: The County proposed elimination of this incentive and the Union proposed (and the Chair recommended) maintaining the incentive at status quo. The Chair's recommendation was based on a desire for a better-educated group of correctional officers. However, the current percentage-based incentive was put in place in 2006 and only 74 Correctional Officers participate in the program at this time. Further, unlike the POST certificate incentive for Sheriff's Deputies, there is no standardized course of instruction that a correctional officer must complete in order to receive the extra pay. Only two college courses are required (Correctional Institutions or Institutional Treatment of the Offender and Psychology of Crime). The remaining college units can be in a field completely unrelated to corrections or criminal justice. Further, these unrelated college units can be substituted for the required training points. (Union Ex. 4, p. 3-4) The costs of this program are not justified and the program should be eliminated.

D. Correctional Officer Shift Differential: SEIU, Local 521's LBFO was to maintain the status quo at 4%, with a reopener to discuss possible increases in the future. There was no evidence offered by either party regarding this differential and no basis for the Chair's recommendation to increase this differential to 8%. As shown in the published MOUs and imposed terms, all shift differentials for all other classifications—including Mental Health Professionals and Social Workers in Bargaining Unit 3 (represented by SEIU), Deputy Sheriffs in Bargaining Unit 1 and Nurses in Bargaining Unit 7—were also

reduced to 4% in 2011. There is no justification for an increase in the shift differential for one class—Correctional Officers—especially when this increase was not even proposed by SEIU.

Dated: August 15, 2014

A handwritten signature in cursive script, reading "Catherine E. Basham", written over a horizontal line.

Catherine E. Basham, Sr. Deputy County Counsel

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IN FACTFINDING PROCEEDINGS UNDER
CALIFORNIA GOVERNMENT CODE SECTION 3505.4(a)

In the Matter of a Dispute)	PERB SA-IM-142M
between)	
The County of Fresno,)	SEIU LOCAL 521'S CONCURRENCES
and)	AND DISSENTS
Service Employees International Union,)	
Local 521.)	

SEIU LOCAL 521 concurs with, and dissents from, the recommendations of the Chair of the fact-finding panel as follows:

Term

SEIU LOCAL 521 concurs with, in part, and dissents from, in part, the Chair's recommendation. SEIU LOCAL 521 concurs with the recommendation to the extent the Chair has proposed a three year term. SEIU LOCAL 521 dissents from the Chair's recommendation with respect to the proposed Escape Clause.

The Chair accurately recognizes the parties' absolute need for a three-year labor contract, and appropriately emphasizes that the County provided no evidentiary support whatsoever for its one-year-term proposal. SEIU LOCAL 521 strongly concurs with the Chair's reasoning in the following paragraph, which is worth quoting in full:

The parties are in desperate need of some long-term labor peace, some repose, and

1 an end to the ongoing, chronic, toxic relationship between the County's largest
2 Union, County management and the Board of Supervisors. A long-term, rather
3 than short-term, MOU is the best vehicle to achieve that goal. The County objects
4 that its finances (as described above), while improving, are still so uncertain as to
5 mitigate against an extended MOU. But the County is rapidly filling vacant
6 positions, rehiring, strengthening programs, and doing so, in great part, on the
7 backs of, and the expense of, its workers. The County failed during the hearing to
8 tell the Panel which positions it would have to leave vacant, and which programs it
9 would have to abolish or hold to the *status quo*, if these employees received
10 anything more than the minimal wage increase proposed by the County. The
11 listener hears the County paint its financial picture in a stark "programs for
12 citizens" vs. "benefits for workers", as if this was a zero sum game.

13 SEIU LOCAL 521 disagrees, in the strongest terms possible, that an MOU with the
14 proposed Escape Clause would achieve the goals of "labor peace, some repose, and an end to the
15 ongoing, chronic, toxic relationship between the County's largest Union, County management
16 and the Board of Supervisors." In fact, the proposed Escape Clause would be inimical to those
17 goals. As proposed, the County could terminate the parties' MOU for any reason in the second or
18 third year. *With such an Escape Clause, the parties would, in reality, be operating under a one-*
19 *year MOU with an optional renewal clause.* Given the County's disgraceful labor-relations track
20 record over the last three years, there is no doubt that the County would invoke the Escape
21 Clause, and the parties would return to the *status quo* of perennial labor strife. While the Escape
22 Clause would permit the Union to terminate the MOU as well, SEIU LOCAL 521 is prepared to
23 live with the consequences of an agreement it bargains in good faith, even if that means foregoing
24 the opportunity to strike a better deal in the second and third years of the contract. SEIU LOCAL
25 521 has taken the firm position that restoration of the 9% takeaway over the course of three years
26 is a fair and reasonable proposal, both to the membership and the County.

27 The parties need *certain*, prolonged labor peace, not a yearly cease-fire. Only an MOU
28 with a guaranteed three-year term can achieve that objective. SEIU LOCAL 521's members have
been working out of contract for three years, and it is only equitable that that they receive the
assurance of a guaranteed three-year labor contract.

SEIU LOCAL 521 emphasizes that the Chair did not recommend the resolution of the
outstanding PERB charges in exchange for an MOU that includes an Escape Clause. SEIU
LOCAL 521 is absolutely unwilling to consider the resolution of the PERB charges unless there
is an MOU with a guaranteed three-year term and a 9% wage increase.

1 **Wages**

2 SEIU LOCAL 521 concurs with, in part, and dissents in very minor part from, the Chair's
3 recommendation. SEIU LOCAL 521 unreservedly supports the Chair's recommendation that the
4 County grant an across-the-board 9% wage increase to bargaining-unit employees, in order to
5 restore employees' salaries to where they were prior to the BOS's unilateral imposition of
6 draconian concessions in 2011. SEIU LOCAL 521 dissents from the Chair's recommendation
7 regarding the timing of the wage increases. The wage increases should occur on the first pay
8 period following September 1, 2014, the first pay period following September 1, 2015, and the
9 first pay period following September 1, 2016.

10 **Correctional Officer Education Incentive Program**

11 SEIU LOCAL 521 concurs with the Chair's recommendation. SEIU LOCAL 521
12 emphasizes the reasonableness of its proposal to maintain the *status quo* for the Correctional
13 Officer Education Incentive Program, which is reflected in the following comment from the
14 Chair: *"The Chair will recommend maintenance of the status quo, although if asked he would*
15 *have happily recommended reinstitution of the 5%/2.5% EIP."*

16 **Correctional Officer Shift Differential**

17 SEIU LOCAL 521 concurs with, and dissents from, the Chair's recommendation. SEIU
18 LOCAL 521 concurs with the Chair's recommendation that the County restore the 8% Shift
19 Differential to Correctional Officers. SEIU LOCAL 521 dissents from the Chair's
20 recommendation to convert the differential to a flat rate. Converting the differential to a flat rate
21 based upon the top step in the salary range during the first year of the MOU would mean that the
22 value of the differential would actually decrease in the second and third years of the MOU, when
23 negotiated wage increases take effect. Even worse, if the parties' MOU expires and the parties
24 are out of contract, the value of the differential would further decrease each year. Moreover,
25 converting the differential to a flat rate would create administrative difficulties in future labor
26 negotiations, as each time the parties bargained for a new contract, they would have to determine
27 a new operative date upon which to calculate the differential's value. Historically, the County has
28 been able to successfully administer the 8% differential, even though it is percentage-based and

1 not a flat rate. SEIU LOCAL 521 sees no reason to disturb a past practice that has worked for the
2 parties.

3 **Correctional Officer Assignments (Jail Work Redesign)**

4 SEIU LOCAL 521 dissents from the Chair's recommendation. While SEIU LOCAL 521
5 is mindful of the Sheriff's needs in staffing the Jail, it is critical that the Sheriff preserve the
6 current number of 8-hour shifts which not only permit many COs to structure their work life
7 around family obligations, but also provide a less physically taxing work schedule for more senior
8 COs who may struggle with a 12-hour shift.

9 SEIU LOCAL 521 cannot agree to the County's proposal which would permit the Sheriff
10 unfettered authority to create "specialty assignments" that are not subject to seniority-based shift-
11 bidding procedures. The Sheriff is able to handpick COs for these "specialty assignments,"
12 regardless of the CO's seniority. The creation of "specialty assignments" necessarily means that
13 there are fewer shifts subject to seniority based bidding, which negatively impacts the majority of
14 COs who are not working "specialty assignments." As a result, the creation of additional
15 "specialty assignments" will make it harder for the majority of COs to bid for shifts that
16 accommodate their familial, childcare, and non-work responsibilities. Historically, COs won
17 seniority rights through a strike in the 1980's. Simply put, SEIU LOCAL 521 cannot tolerate the
18 County's backdoor effort to erode hard-won seniority rights through the creation of "specialty
19 assignments."

20 **Child Protective Services Assignment Differential**

21 SEIU LOCAL 521 dissents from the Chair's recommendation.

22 The Union proposes that the County maintain the existing 2.5% Child Protective Services
23 Assignment Differential for Social Workers who are assigned to manage CPS caseloads. The
24 maintenance of the differential is wholly justified given the significant additional stress and
25 occupational hazards associated with a CPS caseload. Social Workers managing a CPS caseload
26 are regularly confronted with tense, dangerous situations when they perform their work at the
27 residences of at-risk minors. The County's proposed elimination of the CPS Differential would
28 further erode the wages of Social Workers who have already suffered a 9% takeaway. As the

1 Chair recognizes, the County has not offered any compelling explanation for its proposed
2 elimination of the CPS Differential. There has been no change to the Social Worker classification
3 or the CPS caseload which justifies the elimination of the differential.

4 The Chair writes: "Certainly the Chair can think of few things more draining and
5 spiritually depressing than dealing with disadvantaged kids, but that is what the job description
6 for the basic position calls upon these workers to do and the Chair can see no reason to justify
7 continuation of the differential for performing some basic elements of the job." The Chair
8 neglects to recognize the fact that not all Social Workers carry CPS caseloads; a Social Worker
9 carrying a CPS caseload is akin to a specialty assignment. The differential is warranted precisely
10 because the work is "draining" and dangerous.

11 **SWAP**

12 SEIU LOCAL 521 dissents from the Chair's recommendation. At the fact-finding
13 hearing, several of the County's witnesses testified that the Union's SWAP proposal addressed
14 the County's concerns with the previous SWAP program. For example, the County's Personnel
15 Director, Beth Bandy, testified that the Union's proposed SWAP program was a great proposal.
16 Neither the Sheriff nor the Chief Probation Officer are conceptually opposed to the reinstitution
17 of the SWAP program. In light of this remarkable degree of agreement over fundamental terms
18 of the SWAP policy, there should be a guarantee that the SWAP program be reinstituted.
19 Moreover, the Union's witnesses testified to the importance of the SWAP program in enabling
20 employees to meet familial and childcare obligations.

21 **Grievance Procedure**

22 SEIU LOCAL 521 concurs with, and dissents from, the Chair's recommendation.

23 SEIU LOCAL 521 concurs with the first recommendation that the Grievance Procedure
24 permit the Union to file grievances in its own name and in a representative capacity. SEIU
25 LOCAL 521 concurs with the Chair's second recommendation concerning election-of-remedies
26 language, at least conceptually. SEIU LOCAL 521 concurs with the Chair's third
27 recommendation to eliminate involuntary mediation in the Grievance Procedure. SEIU LOCAL
28 521 concurs with the Chair's fourth recommendation to eliminate the tripartite panel in favor of a

1 single arbitrator.

2 SEIU LOCAL 521, in part, concurs with the Chair's fifth recommendation to the extent it
3 advocates the prompt and speedy advancement of grievances. SEIU LOCAL 521 dissents from
4 the Chair's fifth recommendation to the extent that the burden of the prompt and speedy
5 advancement of grievances is placed solely on the Union. If there are penalties for the failure to
6 promptly advance a grievance, then penalties should be assessed against the party at fault,
7 whether that be the Union or the Employer. For example, numerous grievance procedures
8 provide that, if the Employer fails to timely respond to a grievance or a step within the procedure,
9 the grievance is automatically resolved in the Union's favor.


10 **Meet and Confer**

11 SEIU LOCAL 521 concurs with the Chair's recommendation that the Meyers-Milias-
12 Brown Act remain grievable under the parties' Grievance Procedure, because it promotes the
13 prompt resolution of labor-relations disputes.

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16 Dated this 15th day of August, 2014, at Los Angeles, California.

17 Respectfully submitted,

18 WEINBERG, ROGER & ROSENFELD
19 A Professional Corporation

20 By: 
21 Sean D. Graham
22 Attorneys for SEIU, Local 521

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